

1
2
3
4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 LONNIE LEE BURTON,

8 Plaintiff,

v.

9 No. C12-5104 RBL/KLS

10 PAT GLEBE, ERIC JACKSON, KEVIN
11 SHANAHAN, DAVID POE, TERA
McELRAVY, and THOMAS L.
L'HEUREUX,

12 ORDER TO AMEND OR SHOW CAUSE

13 Defendants.

14 This matter has been referred to Magistrate Judge Karen L. Strombom pursuant to 28
15 U.S.C. § 636(b)(1), Local Rules MJR 3 and 4. Plaintiff has been granted leave to proceed *in*
16 *forma pauperis*. Presently before the Court for review is Plaintiff's proposed civil rights
17 complaint. ECF No. 4. The Court will not direct service of Plaintiff's complaint at this time
18 because it is deficient, as is explained in further detail below. Plaintiff will be given an
19 opportunity to amend his complaint.

20 **DISCUSSION**

21 Under the Prison Litigation Reform Act of 1995, the Court is required to screen
22 complaints brought by prisoners seeking relief against a governmental entity or officer or
23 employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint
24 or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that
25 fail to state a claim upon which relief may be granted, or that seek monetary relief from a
26

ORDER TO AMEND OR SHOW CAUSE- 1

1 defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b)(1), (2) and 1915(e)(2); See
2 *Barren v. Harrington*, 152 F.3d 1193 (9th Cir. 1998).

3 A complaint is legally frivolous when it lacks an arguable basis in law or fact. *Neitzke v.*
4 *Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir.
5 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
6 indisputably meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*,
7 490 U.S. at 327. A complaint or portion thereof, will be dismissed for failure to state a claim
8 upon which relief may be granted if it appears the “[f]actual allegations . . . [fail to] raise a right
9 to relief above the speculative level, on the assumption that all the allegations in the complaint
10 are true.” *See Bell Atlantic, Corp. v. Twombly*, 127 S.Ct. 1955, 1965 (2007) (citations omitted).
11 In other words, failure to present enough facts to state a claim for relief that is plausible on the
12 face of the complaint will subject that complaint to dismissal. *Id.* at 1974.

13 Although complaints are to be liberally construed in a plaintiff’s favor, conclusory
14 allegations of the law, unsupported conclusions, and unwarranted inferences need not be
15 accepted as true. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). Neither can the court supply
16 essential facts that an inmate has failed to plead. *Pena*, 976 F.2d at 471 (quoting *Ivey v. Board of*
17 *Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982)). Unless it is absolutely clear that
18 amendment would be futile, however, a pro se litigant must be given the opportunity to amend
19 his complaint to correct any deficiencies. *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987).

20 Under Rule 8(a)(2) of the Federal Rules of Civil Procedure, “the complaint [must
21 provide] ‘the defendant fair notice of what the plaintiff’s claim is and the ground upon which it
22 rests.’” *Kimes v. Stone* 84 F.3d 1121, 1129 (9th Cir. 1996) (citations omitted). In addition, in
23 order to obtain relief against a defendant under 42 U.S.C. § 1983, a plaintiff must prove that the
24

25 ORDER TO AMEND OR SHOW CAUSE- 2

1 particular defendant has caused or personally participated in causing the deprivation of a
2 particular protected constitutional right. *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).
3 To be liable for “causing” the deprivation of a constitutional right, the particular defendant must
4 commit an affirmative act, or omit to perform an act, that he or she is legally required to do, and
5 which causes the plaintiff’s deprivation. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

6 Plaintiff claims that he was placed in administrative segregation (Ad-Seg) for 51 days on
7 charges that were false or “trumped-up” by defendants, that he was denied due process during his
8 Ad-Seg hearings, and that all of this occurred at the direction of Defendant Pat Glebe as
9 retaliation because Plaintiff previously sued Defendant Glebe in 2010. Plaintiff claims that his
10 rights under the 5th, 8th, and 14th Amendments of the United States Constitution have been
11 violated. ECF No. 4, p. 3. In addition to Pat Glebe, Plaintiff names Kevin Shanahan, David Poe,
12 Tera McElravy, and Thomas L’Heureux as defendants. He fails, however, to allege how any of
13 these individuals participated in the violation of any of his constitutional rights.
14

15 To state a cause of action under § 1983, Plaintiff must allege that (1) the named
16 Defendants deprived him of a right secured by the Constitution or laws of the United States and
17 (2) that, in doing so, the Defendants acted under color of state law. See *Flagg Bros., Inc. v.*
18 *Brooks*, 436 U.S. 149, 156-57, 98 S.Ct. 1729, 56 L.Ed.2d 185 (1978). Plaintiff must set forth
19 facts describing when, where and how *individually* named defendants deprived him of a
20 constitutional right. Plaintiff must allege with specificity the names of the individual persons
21 who caused or personally participated in causing the alleged deprivation of his constitutional
22 rights and what they have done or failed to do that resulted in the deprivation of his
23 constitutional rights.
24

25
26
ORDER TO AMEND OR SHOW CAUSE- 3

1 Due to the deficiencies described above, the Court will not serve the complaint. Plaintiff
2 may file an amended complaint curing, if possible, the above noted deficiencies, or show cause
3 explaining why this matter should not be dismissed no later than **March 23, 2012**. If Plaintiff
4 chooses to amend his complaint, he must demonstrate how the conditions complained of have
5 resulted in a deprivation of his constitutional rights. The complaint must allege in specific terms
6 how each named defendant is involved. The amended complaint must set forth all of Plaintiff's
7 factual claims, causes of action, and claims for relief. Plaintiff shall set forth his factual
8 allegations **in separately numbered paragraphs** and shall allege with specificity the following:

- 9
- 10 (1) the names of the persons who caused or personally participated in causing the
11 alleged deprivation of his constitutional rights;
- 12 (2) the dates on which the conduct of each Defendant allegedly took place; and
- 13 (3) the specific conduct or action Plaintiff alleges is unconstitutional.

14

15 An amended complaint operates as a complete substitute for (rather than a mere
16 supplement to) the present complaint. In other words, an amended complaint supersedes the
17 original in its entirety, making the original as if it never existed. Therefore, reference to a prior
18 pleading or another document is unacceptable – once Plaintiff files an amended complaint, the
19 original pleading or pleadings will no longer serve any function in this case. *See Loux v. Rhay*,
20 375 F.2d 55, 57 (9th Cir. 1967) (as a general rule, an amended complaint supersedes the prior
21 complaint). Therefore, in an amended complaint, as in an original complaint, each claim and the
22 involvement of each defendant must be sufficiently alleged.

23

24 Plaintiff shall present his complaint on the form provided by the Court. The amended
25 complaint must be **legibly rewritten or retyped in its entirety**, it should be an original and not a
26 copy, it may not incorporate any part of the original complaint by reference, and it must be

1 clearly labeled the “Amended Complaint” and must contain the same cause number as this case.
2 Plaintiff should complete all sections of the court’s form. Plaintiff may attach continuation
3 pages as needed but may not attach a separate document that purports to be his amended
4 complaint. **Plaintiff is advised that he should make a short and plain statement of claims**
5 **against the defendants. He may do so by listing his complaints in separately numbered**
6 **paragraphs. He should include facts explaining how each defendant was involved in the**
7 **denial of his rights.**

8
9 The Court will screen the amended complaint to determine whether it contains factual
10 allegations linking each defendant to the alleged violations of Plaintiff's rights. The Court will
11 not authorize service of the amended complaint on any Defendant who is not specifically linked
12 to the violation of Plaintiff's rights.

13
14 If Plaintiff decides to file an amended civil rights complaint in this action, he is cautioned
15 that if the amended complaint is not timely filed or if he fails to adequately address the issues
16 raised herein on or before **March 23, 2012**, the Court will recommend dismissal of this action as
17 frivolous pursuant to 28 U.S.C. § 1915 and the dismissal will count as a “strike” under 28 U.S.C.
18 § 1915(g). Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who brings three
19 or more civil actions or appeals which are dismissed on grounds they are legally frivolous,
20 malicious, or fail to state a claim, will be precluded from bringing any other civil action or
21 appeal in forma pauperis “unless the prisoner is under imminent danger of serious physical
22 injury.” 28 U.S.C. § 1915(g).

23 //
24
25 //
26

1 **The Clerk is directed to send Plaintiff the appropriate forms for filing a 42 U.S.C.**
2 **1983 civil rights complaint and for service. The Clerk is further directed to send a copy of**
3 **this Order and a copy of the General Order to Plaintiff.**

4

5 **DATED** this 16th day of February, 2012.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26


Karen L. Strombom
Karen L. Strombom
United States Magistrate Judge